

8
No. 87-1113

Supreme Court, U.S.
FILED

JAN 28 1988

JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1987

CLARENCE ROBERTS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF APPEALS, EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOHN T. CORRIGAN, *Prosecuting Attorney*
of Cuyahoga County, Ohio

GEORGE J. SADD, *Counsel of Record*
Assistant Prosecuting Attorney

The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7730

Attorneys for Respondent

I.

COUNTER QUESTION OF LAW

Respondent submits that the questions presented by the record in this case are more properly stated as follows:

Whether the bindover of Petitioner was properly accomplished in compliance with Ohio law.

II.

TABLE OF CONTENTS

Counter Question of Law	I
Objections to Jurisdiction	1
History of the Case	3
Statement of Facts	4
Reasons for Denying the Writ	6
Conclusion	9

TABLE OF AUTHORITIES

Cases

<i>State v. Douglas</i> (1985), 20 Ohio St. 3d 34.....	6,8
<i>State v. Jenkins</i> (1984), 15 Ohio St. 3d 164	8
<i>State v. Oviedo</i> (1982), 5 Ohio App. 3d 168	8
<i>State v. Whiteside</i> (1982), 6 Ohio App. 3d 30.....	8

Rule

Ohio R. Juv. P., R. 30.....	4,8
-----------------------------	-----

No. 87-1113

IN THE

Supreme Court of the United States

October Term, 1987

CLARENCE ROBERTS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF APPEALS, EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

OBJECTIONS TO JURISDICTION

There exists no substantial federal question involved which would require this Court to review the instant matter.

The questions herein presented were raised in the Ohio Court of Appeals of Cuyahoga County and the Supreme Court of Ohio.

The Ohio Court of Appeals, Eighth District, unanimously affirmed the Petitioner's convictions. Likewise, the Ohio Supreme Court overruled Petitioner's Motion For Leave To Appeal finding no substantial constitutional question.

The Ohio Courts decided this case in accordance with the statutes of the State of Ohio, the Constitution of the United States and the applicable decisions of this Court.

No substantial federal question is presented by the instant Petition for Certiorari.

HISTORY OF THE CASE

On September 3, 1985 Petitioner, age 15, was charged in a delinquency complaint with Aggravated Murder (Ohio Rev. Code 2903.01), Aggravated Robbery (Ohio Rev. Code 2911.01 (A)(1)) and Felonious Assault (Ohio Rev. Code 2903.11 (A)(2)).

The Respondent, pursuant to Ohio Law, requested that the Juvenile Court transfer the proceedings to the Common Pleas Court so the Petitioner could be tried as an adult.

The Juvenile Court, on September 26, 1985 determined that probable cause existed to believe that Petitioner committed the alleged acts and that such acts would be felonies if committed by an adult.

The Juvenile Court, on October 18, 1985 conducted an amenability hearing. At the conclusion of the hearing, the Juvenile Court bound Petitioner over to the General Division of the Court of Common Pleas, Cuyahoga County, to be tried as an adult.

Subsequently, the Grand Jury of Cuyahoga County, on November 14, 1985 indicted Petitioner for the following crimes: Aggravated Murder with a Gun Specification and a Felony Murder Specification; Aggravated Robbery, with a Gun Specification; and, a count of Receiving Stolen Property.

Petitioner, on March 20, 1986 pled guilty to murder, with a gun specification and aggravated robbery, with a gun specification.

The Court of Appeals, Eighth Judicial District unanimously affirmed Petitioner's conviction. The Ohio Supreme Court declined jurisdiction finding no substantial constitutional question presented for review.

STATEMENT OF FACTS

A delinquency complaint charged that Petitioner used a firearm to commit aggravated murder, aggravated robbery, and felonious assault. Pursuant to Juv. R. 30, the state moved the juvenile court to transfer him to the general division for trial on those charges as an adult. After an evidentiary hearing, the juvenile court found probable cause to believe that Petitioner committed those offenses. It then ordered evaluative mental and physical examinations, before determining the Petitioner's amenability to care or rehabilitation in facilities for delinquent children.

At the amenability hearing, the Petitioner's probation officer recounted the results of those examinations and the Petitioner's response to supervision after prior offenses. The Petitioner was physically normal, with a full-scale I.Q. of 89 and an eighth grade reading ability. The examining psychologist concluded that he functioned at a low average to dull normal intelligence level. The examining psychiatrist concluded that Petitioner might be responsive to rehabilitative therapy, unless he had in fact committed the alleged offenses.

Within the preceding year, the Court had adjudicated him delinquent and placed him on intensive probation for multiple offenses. They included two counts of criminal mischief, misdemeanor theft, two counts of breaking and entering, felony theft, possession of criminal tools, unauthorized use of a motor vehicle, and receiving stolen property. His probation officer testified that Petitioner resisted probation supervision, violated his curfew by remaining out till 3:00 a.m., and smoked marijuana almost daily.

The probation officer further stated that Petitioner experimented with amphetamines and cocaine, and drank alcoholic beverages whenever they were available. He

had a poor school record, marked by frequent truancy and course failures. Although his relationship with his mother and step-father was adequate, his step-father had a drinking problem, and neither parent could enforce his curfew.

At the end of the hearing, the Court entered the following order:

"The Court further finds after full investigation, including a physical, psychological, and psychiatric examination, made by the Psychiatric Clinic of this Court, that there are reasonable grounds to believe that the child is not amenable to the care or rehabilitation in any facility designed for the care, supervision and rehabilitation of delinquent children, and that the safety of the community may require that he be placed under legal restraint including, if necessary, for the period extending beyond his majority. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that under the provisions of Section 2151.26 Ohio Revised Code and Rule 30 Ohio Rules of Juvenile Procedure, that the said child, Clarence Roberts, is bound over for further proceedings according to law."

Following the juvenile court's transfer order, the grand jury indicted the Petitioner for (a) aggravated murder, with a felony murder specification and a penalty enhancing specification for possessing a firearm, (b) aggravated robbery, with a penalty enhancing specification for possessing a firearm, and (c) receiving stolen property. Pursuant to plea negotiations, Petitioner later pled guilty to murder as a lesser included offense or aggravated murder, aggravated robbery, and a penalty enhancing specification for possessing a firearm. The state then dismissed the remaining charges.

REASONS FOR DENYING THE WRIT

OHIO LAW DOES NOT REQUIRE THAT JUVENILE COURTS ISSUE WRITTEN FINDINGS ON A BINDOVER TO THE ADULT COURT. UNDER OHIO LAW, ALL THAT IS REQUIRED TO ACCOMPLISH A TRANSFER OF JURISDICTION IS THAT THE JUVENILE COURT JUDGE CONSIDER CERTAIN FACTORS IN MAKING ITS DETERMINATION. THE RECORD BELOW DOES NOT DEMONSTRATE ANY ABUSE OF DISCRETION ON THE PART OF THE JUVENILE COURT NOR ANY DENIAL OF DUE PROCESS TO PETITIONER WHEN THE JUVENILE COURT JUDGE FULLY CONSIDERED ALL NECESSARY FACTORS PRIOR TO THE BINDOVER.

Petitioner argues that he was deprived of due process of law when, on a bindover proceeding, the juvenile court failed to issue written findings on its decision to relinquish jurisdiction to the adult court.

The Ohio Supreme Court's unanimous *per curiam* decision in *State v. Douglas* (1985), 20 Ohio St. 3d 34, controls the disposition of Petitioner's argument. In *Douglas*, the Court said at 35-37:

"The issue presented in this appeal is whether the bind-over of appellee was properly accomplished in compliance with R.C. 2151.26 and Juv. R. 30. . . .

"R.C. 2151.26 and Juv. R. 30 set forth the procedure to be followed by a juvenile court in a bind-over situation. R.C. 2151.26(A) lists the determinations required to be made by the juvenile court before jurisdiction over a juvenile delinquent can be relinquished to the general division. Subdivision (3)(a) of this section requires, *inter alia*, a determination by the court that there are

reasonable grounds to believe that: 'He [the child] is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children.'

"Juv. R. 30 amplifies the above requirement:

"(E) In determining whether the child is amenable to the treatment or rehabilitative processes available to the juvenile court, the court shall consider:

"(1) The child's age and his mental and physical health;

"(2) The child's prior juvenile record;

"(3) Efforts previously made to treat or rehabilitate the child;

"(4) The child's family environment; and

"(5) School record.

"In this case, the juvenile court made all the determinations required by R.C. 2151.26(A). However, the journal entry relinquishing jurisdiction did not specifically address any of the five factors listed in Juv. R. 30(E). . . .

"Neither R.C. 2151.26 nor Juv. R. 30 requires the juvenile court to make written findings as to the five factors listed in Juv. R. 30(E). The rule simply requires the court to consider these factors in making its determination on the amenability issue. Although the better practice would be to address each factor, as long as sufficient credible evidence exists in the record before the court, the bind-over order should not be reversed in the absence of an abuse of discretion.

"In the case at bar, sufficient, credible evidence on each factor existed in the record before the juvenile court. Documents listing the age of appellee [a sixteen-year-old juvenile] and dealing with his

physical and mental health were admitted into evidence at the bind-over proceeding. The lengthy prior juvenile record of appellee was also admitted at the proceeding. Rehabilitative efforts were the subject of testimony at the hearing, as was the family environment of appellee. Finally, appellee's school record was discussed, albeit in a limited context.

"The purpose behind R.C. 2151.26 and Juv. R. 30 is the assessment of the probability of rehabilitating the child within the juvenile justice system. In *State v. Carmichael* (1973), 35 Ohio St. 2d 1 [64 O.O.2d 1], the court recognized the wide latitude that must be given a juvenile court in these proceedings. . . .

"* * *

"Further, there is no requirement that each of the five factors be resolved against the juvenile.

"The record before the juvenile court in this case contains sufficient, credible evidence pertaining to each factor listed in Juv. R. 30(E). There has been no showing of an abuse of discretion on the part of the juvenile court.

"Accordingly, this court . . . reinstates the appellee's convictions." (*All internal citations and footnotes omitted.*) (*Emphasis added.*)

As in the *Douglas* case, the record here contains "sufficient, credible evidence on each factor" listed in Juv. R. 30(E). The trial court did not abuse its broad discretion by deciding that the juvenile system probably lacks the ability to rehabilitate this offender. Cf. *State v. Oviedo* (1982), 5 Ohio App. 3d 168, 170-171; *State v. Whiteside* (1982), 6 Ohio App. 3d 30, 35-36; see also *State v. Jenkins* (1984), 15 Ohio St. 3d 164, 222 (abuse of discretion defined).

CONCLUSION

In conclusion, the respondent submits that the petition herein fails to present any federal question of constitutional dimension justifying review by the Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN J. CORRIGAN, *Prosecuting Attorney*
of Cuyahoga County, Ohio

GEORGE J. SADD, *Counsel of Record*
Assistant Prosecuting Attorney

The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7730

Attorneys for Respondent